

---

**Wednesday**  
**April 3, 1991**

**121-224**

---

**Part IV**

**Department of  
Transportation**

---

**Federal Aviation Administration**

---

**14 CFR Part 121**

**Anti-Drug Program for Personnel  
Engaged in Specified Aviation Activities;  
Final Rule; Extension of Compliance Date**

**DEPARTMENT OF TRANSPORTATION****Federal Aviation Administration****14 CFR Part 121**

[Docket No. 25148; Amdt. No. 121-224]

RIN 2120-AC33

**Anti-Drug Program for Personnel Engaged in Specified Aviation Activities****AGENCY:** Federal Aviation Administration (FAA), DOT.**ACTION:** Final rule; extension of compliance date.

**SUMMARY:** This announces an extension of the compliance date under the aviation industry drug testing rule for the submission of anti-drug programs by operators who are not required to hold an air carrier operating certificate or an air taxi/commercial operator operating certificate. Under this final rule, these operators will have an additional 180 days to submit an anti-drug program to the FAA for approval. This additional time is needed to provide the FAA an opportunity to take final action on a recently issued notice of proposed rulemaking that would change the scope of the anti-drug rule. This action extends the otherwise imminent deadline for operators who the FAA has proposed to remove from coverage under the rule.

**EFFECTIVE DATE:** This final rule is effective April 3, 1991.

**FOR FURTHER INFORMATION CONTACT:** Mr. William McAndrew, Office of Aviation Medicine, Drug Abatement Branch (AAM-220), Federal Aviation Administration, 400 Seventh Street SW., Washington, DC 20590; telephone (202) 366-6710.

**SUPPLEMENTARY INFORMATION:****Availability of Final Rule**

Any person may obtain a copy of this final rule by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attn: Public Inquiry Center (APA-230), 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267-3484. Requests must include the amendment number identified in this final rule. Persons interested in being placed on a mailing list for future rulemaking actions should request a copy of Advisory Circular 11-2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedures.

**Background and Discussion of the Amendment**

On November 14, 1988, the FAA issued a final anti-drug rule requiring

certain aviation employers and operators to develop and to implement an anti-drug program for employees performing specified aviation activities (53 FR 47024; November 21, 1988). The FAA has amended the final rule several times to address implementation problems and clarify the requirements of the rule.

Pertinent to this action, the FAA extended for one year the compliance deadline for operators as defined in Federal Aviation Regulations § 135.1(c) (14 CFR 135.1(c)) (hereinafter "§ 135.1(c) operators") (55 FR 10756; March 22, 1990). The extension was issued because the FAA became aware of the need to reevaluate the inclusion of those aviation operators otherwise excluded from FAR part 121 and part 135 requirements. The operations conducted by these § 135.1(c) operators include student instruction, nonstop sightseeing flights conducted within a 25-mile radius of the airport of takeoff, ferry or training flights, aerial work operations, sightseeing flights in hot air balloons, nonstop flights within a 25-mile radius of the airport of takeoff for parachute jumps, helicopter flights conducted within a 25-mile radius of the airport, rotorcraft operations under FAR part 133, and Federal election campaign flights conducted under FAR § 91.59.

In the notice extending the compliance deadline, the FAA committed to evaluate the need for further rulemaking to remove these operators from the rule. During the past year, the FAA has conducted a thorough review of the appropriate scope of the anti-drug rule.

On February 12, 1991, the FAA issued a notice of proposed rulemaking (NPRM) to exclude § 135.1(c) operators from the anti-drug rule, with the exception of those entities conducting sightseeing operations under § 135.1(b)(2) (56 FR 6542; February 15, 1991). The NPRM established an April 1, 1991, closing date for comments. The FAA will not be able to complete final action on the NPRM until after the April 10, 1991, compliance deadline for § 135.1(c) operators to submit their anti-drug plans to the FAA for approval. Therefore, this action further extending the compliance deadline is needed. Absent an extension, § 135.1(c) operators might be required to undertake unnecessarily the cost and other difficulties of plan submission.

**Reason for No Notice and Immediate Adoption**

This amendment to the anti-drug rule is needed immediately to extend the otherwise imminent compliance date specified in the final rule. The delay of

the date by which these operators must submit and implement an anti-drug plan will relieve a burden on these operators pending the completion of the rulemaking on the scope of the anti-drug rule. For this reason, notice and public comment procedures are impracticable, unnecessary, and contrary to public interest.

Further, as currently provided in the anti-drug rule, the April 10, 1991, compliance date for submission of an anti-drug plan to the FAA by these operators will fall shortly after publication of this final rule. To avoid placing these operators in technical noncompliance with the anti-drug rule, the FAA has determined that good cause exists to make this final rule effective in less than 30 days.

**Economic Assessment**

In accordance with the requirements of Executive Order 12291, the FAA reviewed the costs and benefits of the final anti-drug rule issued on November 14, 1988. At that time, the FAA prepared a comprehensive Regulatory Impact Analysis of the final anti-drug rule. The FAA also summarized and analyzed the comments submitted by interested persons on the economic issues in the final rulemaking document published in the Federal Register on November 21, 1988.

This amendment extends the compliance deadlines for operators who do not hold a FAR part 121 or 135 certificate. This spot amendment is cost relieving; that is, it does not impose any costs on these operators. Due to the sparse historical record of accidents caused by drug abuse, it is difficult to accurately estimate the marginal foregone benefits that result by extending the deadline for these peripheral operators. The FAA believes, however, that any potential reduction in benefits as a result of this amendment will be negligible, and therefore has determined that a revision of the comprehensive Regulatory Impact Analysis for the amendment is not necessary and the preparation of a separate economic analysis for this amendment is not warranted.

**Regulatory Flexibility Determination**

The Regulatory Flexibility Act of 1980 requires a Federal agency to review any final rule to assess its impact on small business. The amendment contained in this final rule merely extends by 180 days the compliance deadlines for certain operators. In consideration of the nature of this amendment, the FAA has determined that the final rule will not have a significant economic impact,

positive or negative, on a substantial number of small businesses.

#### Paperwork Reduction Act Approval

The recordkeeping and reporting requirements of the final anti-drug rule, issued on November 14, 1988, were previously submitted to the Office of Management and Budget (OMB) for approval in accordance with the Paperwork Reduction Act of 1980. The OMB approval is under control number 2120-0535. Because this final rule does not amend the recordkeeping and reporting requirements, it is not necessary to amend the prior approval received from OMB.

#### Federalism Implications

The final rule adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, the FAA has determined that this final rule does not have sufficient federalism implications to warrant preparation of a Federalism Assessment.

#### Conclusion

This action extends the otherwise imminent deadline for operators who the FAA has proposed to remove from coverage under the rule. It is needed to provide the FAA an opportunity to take final action on the recently issued notice

of proposed rulemaking that would change the scope of the anti-drug rule.

Pursuant to the terms of the Regulatory Flexibility Act of 1980, the FAA certifies that the final rule will not have a significant economic impact, positive or negative, on a substantial number of small entities. In addition, the final rule will not result in an annual effect on the economy of \$100 million or more and will not result in a significant increase in consumer prices; thus, the final rule is not a major rule pursuant to the criteria of Executive Order 12291. However, because the rule involves issues of substantial interest to the public, the FAA has determined that the final rule is significant under the Regulatory Policies and Procedures of the Department of Transportation (44 FR 11034; February 2, 1979).

#### List of Subjects in 14 CFR Part 121

Air carriers, Air transportation, Aircraft, Aircraft pilots, Airmen, Airplanes, Aviation safety, Drug abuse, Drugs, Narcotics, Pilots, Safety, Transportation.

#### The Amendments

Accordingly, the FAA amends part 121 of the Federal Aviation Regulations (14 CFR part 121) as follows:

#### PART 121—CERTIFICATION AND OPERATIONS: DOMESTIC, FLAG, AND SUPPLEMENTAL AIR CARRIERS AND COMMERCIAL OPERATORS OF LARGE AIRCRAFT

##### 1. The authority citation for part 121

continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1355, 1356, 1357, 1401, 1421-1430, 1472, 1485, and 1502; 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983).

#### Appendix I of Part 121 [Amended]

2. By revising Paragraph A(4) of section IX of appendix I to part 121 to read as follows:

A. \* \* \*

(4)a. \* \* \*

b. Each operator as defined in § 135.1(c) of this chapter shall submit an anti-drug program to the FAA (specifying the procedures for all testing required by this appendix) not later than October 7, 1991. Each operator shall implement its anti-drug program for its direct employees not later than 60 days after approval of the anti-drug program by the FAA. Each operator shall implement its approved anti-drug program for its contractor employees not later than 360 days after initial implementation of the operator's approved anti-drug program for its direct employees.

Issued in Washington, DC, on March 29, 1991.

James B. Busey,  
Administrator.

[FR Doc. 91-7854 Filed 3-29-91; 4:35 pm]

SELLING CODE 4910-13-M